

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-6516

CHARLES D. BRADEN,

Petitioner,

—v.—

80th JUDICIAL CIRCUIT COURT OF THE
COMMONWEALTH OF KENTUCKY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Date	Proceedings
1970	
Nov. 30	Motion to proceed in forma pauperis and to appoint counsel and affidavit of pauperism filed. Petition for Writ of Habeas Corpus tendered.
Dec. 10	Order signed by Judge Bratcher entered granting petitioner permission to proceed in forma pauperis, and the respondent to show cause why the writ should not be granted. Petition for Writ of Habeas Corpus filed.
Dec. 30	Response to Petition for a Writ of Habeas Corpus ad Subjiciendum filed by respondent.
1971	
Feb. 26	Memorandum and Order signed by Judge Bratcher that Jefferson Circuit Court within 60 days from date of this order either (1) secure petitioner for trial or (2) dismiss the charges against him. Copies to Petitioner, Atty. Gen. of Ky., Atty. Gen. of Ala. and Edwin Schroering, Comm. Atty., Ky.
March 26	Notice of appeal, application for certificate of probable cause and motion to dispense with appeal bond filed by respondent-appellant.
April 5	Order by Judge Bratcher that respondent may appeal without filing and posting appeal bond.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Date	Proceedings
1971	
March 30	Notice of appeal by respondent filed.
June 2	Brief for appellant filed.
August 11	Appellee's petition for leave to file in forma pauperis, supporting affidavit, and motion for appointment of counsel filed.
Sept. 30	Order appointing counsel (David R. Hood) for appellee entered.
Nov. 2	Brief for appellee filed.
Nov. 19	Reply brief for appellant filed.
Dec. 13	Cause argued and submitted.
1972	
Jan. 18	Opinion filed and judgment entered reversing opinion of District Court and remanding for further proceedings.
March 23	Letter from counsel for appellee requesting transmission of record to Supreme Court.
April 20	Certified record including original record on appeal mailed to clerk of Supreme Court.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

No. 6798

CHARLES D. BRADEN, PETITIONER

v.

**80th JUDICIAL CIRCUIT COURT, Commonwealth of
Kentucky, real party in interest, RESPONDENT**

**PETITION FOR A WRIT OF HABEAS CORPUS
AD SUBJICIENDUM**

Tendered Nov. 30, 1970. Filed Dec. 10, 1970.

Comes now Charles D. Braden, personified herein after as petitioner, and files this, his application for a writ of habeas corpus ad subjiciendum, pursuant to 28 U.S.C. Sec. 2241 (C) (3), et seq. [sic] and as grounds thereof shows and represents unto your honor as follows:

*** STATEMENT ***

On or about July 31, 1967 the Jefferson County Grand Jury filed an indictment against petitioner charging in count one, Storehouse Breaking, 433.190, and, in count two, Safe Breaking, 433.230 Sometime after this date and before November 10, 1967 petitioner was returned to Jefferson County Kentucky from California Ad prosequendum.

On or about November 18, 1967, petitioner escaped custody, upon which the Kentucky authorities obtained a federal warrant [sic] charging unlawful flight, using indictment #135047 as the bases there of [sic]. On february 24, 1968 petitioner was placed under arrest in Mobile Alabama and charged with felony crimes under Alabama State jurisdiction. Shortly after petitioner's arrest in Alabama the federal authorities notified the Kentucky authorities of petitioners arrest and place of

confinement, then dropped the federal warrant. The Kentucky authorities then filed detainers against petitioner with the Mobile County Sheriffs Department.

On or about October 28, 1968, petitioner received a letter from the Jefferson County District Attorney, advising that another indictment #182150, charging, in count one, Storehouse Breaking 483.190, and in count two Safe Breaking 483.280, was also pending against petitioner, prior to that date petitioner had no knowledge of said indictment.

On or about the 3rd day of February 1969, petitioner filed demands for speedy trials into the 30th Judicial Circuit Court with a copy going to the officer prosecuting [sic] the action for the Commonwealth, no action was taken on said demands. On the 3rd day of December 1969, the respondent court denied petitioner's motion to quash indictment #185047 or in the alternative return petitioner to Jefferson County for Trial.

On or about the 27th day of July 1970, respondent court dismissed petitioner's application for a writ of habeas corpus ad prosequendum filed under both indictments. On the 28th day of October 1970, the Court of Appeals of Kentucky, per the chief justice denied petitioner's application for mandamus in which petitioner sought to force respondent court to issue an order to begin proceeding to have petitioner returned to the Commonwealth for trials on both indictments, or dismiss said indictments, no opinion was entered by the appellate court.

On the 2d day of April 1969, petitioner was convicted on the Alabama charges and sentenced to serve a term of five years in the Alabama State Prison, of which his release date is April 7, 1974.

* CONTENTIONS *

1. Petitioner contends that he is entitled to speedy trials on indictments 185047 and 182150, although he is presently serving a prison sentence in another jurisdiction.

2. Petitioner contends that if trial on the pending indictments, 185047 and 182150 are postponed, it may impair the ability of petitioner to defend himself.

3. Petitioner contends that due to the outstanding untried indictments, there is little if any chance of parole

consideration from his present imprisonment, and the possibilities that he might receive a sentence at least partially concurrent with his present sentence may be forever lost, and the conditions under which he must serve his present sentence are greatly worsened by the pendency of the untried indictments 185047 and 182150.

WHEREFORE, petitioner prays that habeas corpus issue discharging him from custody and any further proceedings arising out of the charges on which the indictments are based, or in the alternative issue such directive that would cause respondent court to commence proceedings to have petitioner return to Jefferson County Kentucky for trials on indictments #185047 and #182150.

Respectfully submitted

/s/ CHARLES D. BRADEN
Petitioner

[Jurat Omitted in Printing]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[Title Omitted in Printing]

RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS
AD SUBJICIENDUM

Filed December 30, 1970.

Comes now respondent by counsel in response to the petitioner's Petition for a Writ of Habeas Corpus Ad Subjiciendum and states that this Court is without jurisdiction to entertain this writ for the reason that 28 U.S.C. § 2241 does not authorize such a writ to be issued. The petitioner is not in custody within this district and the petitioner does not challenge the legality of his custody under the Alabama law. The petitioner may not use the authority of 28 U.S.C. § 2241 (c) (5) authorizing the Federal Court to procure prisoners for the purpose of testifying or for trial since that authority only applies to prisoners who are going to testify in a federal proceeding or who are going to be tried by a federal court. *Huston v. State of Kansas*, C.A. Kan. 1968, 390 F.2d 156; *Lawrence v. Willingham*, 373 F.2d 731 (10th Cir. 1967); *Kirk v. State of Oklahoma*, U.S.D.C., W. D. Okla, 1969, 300 F. Supp. 453.

The respondent points out that the decision in *Smith v. Hooey*, 393 U.S. 374, 89 S. Ct. 575, 21 L.Ed. 2d 607 (1969), was made by the Supreme Court on certiorari from the Texas Supreme Court denying the petitioner a writ of mandamus to compel the Texas Trial Court to either dismiss the charges or hold a trial. In *Dickey v. Florida* — U.S. —, the Supreme Court overturned a conviction of the Florida court on certiorari where the Supreme Court found that the petitioner had suffered actual prejudice in being denied a speedy trial. The petitioner in the case at bar may challenge the legality of any of the adverse effects of any Kentucky detainer against him in Alabama by habeas corpus in the Alabama Fed-

eral District Court. See *Caruth v. Mackel*, D.C.E.N.Y.,
Decided 7/15/70.

The respondent prays that the petition be dismissed
for want [sic] of jurisdiction over the person and for
want [sic] of jurisdiction over the subject matter.

Respectfully submitted,

JOHN B. BRECKINRIDGE
Attorney General

/s/ DAVID E. MURRELL

By: DAVID E. MURRELL

Assistant Attorney General
Capitol Building
Frankfort, Kentucky 40601

Counsel for Respondent

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

No. 6793

CHARLES D. BRADEN, PETITIONER

v.

30th JUDICIAL CIRCUIT COURT, Commonwealth of
Kentucky, real party in interest, RESPONDENT

MEMORANDUM AND ORDER

Entered Feb. 26, 1971

The above petitioner has caused to be filed with this Court his verified affidavit of poverty and motion for leave to proceed in forma pauperis on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (c) (3). On December 10, 1970, this Court entered an order granting permission to proceed in forma pauperis and the petition for writ of habeas corpus was filed without the prepayment of fees and costs or giving security therefor, pursuant to Title 28 U.S.C. § 1915 (1).

It appears from the record that in 1967 petitioner Braden was indicted by the Jefferson County Grand Jury, Louisville, Kentucky, on one count of storehouse breaking and in count two safe breaking. Sometime after the petitioner escaped custody, he was subsequently arrested in Alabama and charged with felony crimes under Alabama State law. Petitioner is presently imprisoned at the Alabama State Penitentiary where a detainer has been lodged against him by Jefferson County officials to answer the before-mentioned charges and an additional charge of storehouse breaking and safe breaking which petitioner was notified of in 1968.

Petitioner filed demands for a speedy trial in February, 1969, with the Jefferson Circuit Court and on or about October, 1970, with the Court of Appeals of Kentucky. Both demands were denied.

Petitioner is now before this Court seeking a speedy trial in all pending Kentucky charges or a dismissal of the pending charges.

The respondent contends that this Court is without jurisdiction to entertain the writ and may challenge the legality of any adverse effects of any Kentucky detainer against him in Alabama by habeas corpus in the Alabama Federal District Court.

In the case of *Smith v. Hoey*, 393 U.S. 374 (1969), the Court held: (1) that a state has a duty under the Constitution of the United States to attempt to effect the return of a prisoner from a foreign jurisdiction for trial on pending state charges when such prisoner so demands; and (2) that unsuccessful demands by one seeking trial are reviewable under Federal Constitutional standards. Since it is the State of Kentucky which must take action, it follows that jurisdiction rests in this district which has jurisdiction over the necessary state officials. Also see *Klopper v. North Carolina*, 386 U.S. 218 (1967); *Word v. State of North Carolina*, 406 F. 2d 352, 4th Cir. (1969); *Dickey v. Florida*, 398 U.S. 30 (1970).

In light of *Smith v. Hoey*, supra, this Court must grant the petition.

IT IS ORDERED that Jefferson Circuit Court, Louisville, Kentucky, within sixty (60) days from the date of this order either (1) secure petitioner for trial or (2) dismiss the charges against him.

Dated: February 25, 1971

/s/ RHODES BRATCHER
RHODES BRATCHER
United States District Judge

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 71-1301

CHARLES D. BRADEN, PETITIONER-APPELLEE,

v.

**30th JUDICIAL CIRCUIT COURT OF THE
COMMONWEALTH OF KENTUCKY, RESPONDENT-APPELLANT.**

**On Appeal from the United States District Court
for the Western District of Kentucky
at Louisville**

Decided and Filed January 18, 1972.

**Before: EDWARDS and MCCREE, Circuit Judges, and
MCALLISTER, Senior Circuit Judge.**

MCCREE, Circuit Judge. We consider an appeal from the granting of a petition for habeas corpus. In July 1967, a Kentucky grand jury returned a two-count indictment charging appellee with storehouse-breaking and safe-breaking. Pursuant to this indictment, appellee was brought from California to Kentucky, whence he escaped on November 13, 1967. He was subsequently arrested in Alabama on an Alabama felony charge, and a detainer was filed against him by Kentucky authorities while he was awaiting trial on the Alabama charge. In February 1969, appellee, who was still in custody in Alabama,

filed a demand for trial on the Kentucky indictment in the Jefferson County, Kentucky, Circuit Court. Kentucky took no action on appellee's speedy-trial demand, and in April 1969 Braden was convicted of the Alabama charge and received a five-year sentence. Thereafter, Kentucky denied his subsequent motion to quash the indictment or in the alternative to return him for trial. In October 1970, the Kentucky Court of Appeals denied appellee's petition for mandamus to force the Jefferson County authorities to request his return for trial or to dismiss the indictment.

Braden then filed this petition for a writ of habeas corpus in the United States District Court for the Western District of Kentucky at Louisville, the district having jurisdiction over the Jefferson County Circuit Court. The petition, filed pursuant to 28 U.S.C. §§ 2241(c)(3), 2254, alleged that appellee was being deprived of his constitutional right to a speedy trial because of the refusal of Kentucky authorities to seek his return from Alabama for trial on the Kentucky indictment. The district court, interpreting *Smith v. Hooy*, 393 U.S. 374 (1968), to require it to afford a remedy, and regarding Kentucky as the state "which must take action," held that it had jurisdiction and ordered appellant to secure Braden for trial within 60 days or to dismiss the charges against him.

The principal issue on appeal is whether a district court has jurisdiction to issue a writ of habeas corpus when the petitioner is not in physical custody within the forum state. Although there is a conflict among the circuits whether a petition can be brought in the state that has issued a detainer, compare, e.g., *U.S. ex rel. Van Scoten v. Pennsylvania*, 404 F.2d 767 (3d Cir. 1968), with *Word v. North Carolina*, 406 F.2d 352 (4th Cir. 1969), the issue has recently been decided in this circuit in *White v. Tennessee*, 447 F.2d 1354 (6th Cir. 1971). But cf. *Himes v. Ohio Adult Parole Authority*, 448 F.2d 410 (6th Cir. 1971). We held in *White*, which was decided after the decision we review in this appeal, that the habeas corpus jurisdiction conferred on the federal courts by 28 U.S.C. § 2241(a) is "limited to petitions filed by persons physically present within the territorial limits of the District Court." 447 F.2d at 1354. Accordingly, we are con-

strained to reverse the decision of the district court in this case.

We reach this conclusion reluctantly because we observe that this decision possibly will result in Braden's inability to find a forum in which to assert his constitutional right to a speedy trial—a right which he is legally entitled to assert at this time under *Peyton v. Rowe*, 391 U.S. 54 (1968). This is a possibility because the rule in the Fifth Circuit, where appellee is incarcerated, appears to be that a district court in the state that has filed the detainer is the proper forum in which to file the petition. See *May v. Georgia*, 409 F.2d 203 (5th Cir. 1969). See also *Rodgers v. Louisiana*, 418 F.2d 287 (5th Cir. 1969). Braden thus may find himself ensnared in what has aptly been termed "Catch 2254"—unable to vindicate his constitutional rights in either of the only two states that could possibly afford a remedy. See Tuttle, *Catch 2254: Federal Jurisdictional and Interstate Detainers*, 82 U. Pitt. L. Rev. 489, 502-08 (1971). He is not the first state prisoner to be confronted by the dilemma posed by this inter-circuit conflict. See *U.S. ex rel. Pitcher v. Pennsylvania*, 314 F.Supp. 1829 (E.D. Pa. 1970). Of course, the Fifth Circuit may hold that the Alabama District Court has jurisdiction to entertain Braden's petition. See *Word v. North Carolina*, *supra*, 406 F.2d at 357 n.6; cf. *Nelson v. George*, 399 U.S. 224 (1970). In the alternative, he may be able to bring an action in the Western District of Kentucky for a declaratory judgment that he has been denied his constitutional right to a speedy trial.¹ However, since the Congress has not provided a

¹ It is, of course, well-established in this circuit that a declaratory judgment action cannot be used as a substitute for the statutory habeas corpus procedure. *Morton v. Avery*, 398 F.2d 138 (6th Cir. 1968); *Scruggs v. Henderson*, 380 F.2d 951 (6th Cir. 1967); *Forsythe v. Ohio*, 333 F.2d 678 (6th Cir. 1964). However, this rule is based not upon the wording of the Declaratory Judgment Act, 28 U.S.C. § 2201-02, but instead upon judicial refusal to allow prisoners to circumvent habeas requirements such as exhaustion of state remedies (28 U.S.C. § 2254(b)). Nevertheless, appellee may be entitled to seek declaratory relief in the unusual circumstances presented by this case. We observe initially that Fed. R. Civ. P. 57 provides that "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases

where it is appropriate." This indicates that a court has power to grant declaratory relief when another adequate remedy is available, although it may, in the exercise of its discretion, decline to do so. "The test is whether or not the other remedy is more effective or efficient, and hence whether the declaratory action would serve a useful purpose." 6A J. Moore, *Federal Practice* § 57.08[3], at 3081-82. See also *E. W. Bliss Co. v. Cold Metal Process Co.*, 102 F.2d 105, 109 (6th Cir. 1939). Moreover, even if habeas should be deemed a special statutory proceeding, the Supreme Court has indicated that "unique" circumstances will justify a district court's exercising jurisdiction over a declaratory action. *Katsenbach v. McClung*, 379 U.S. 294, 296 (1964). It would seem that a showing that the special statutory proceeding is inadequate to protect the plaintiff's rights or that declaratory relief would afford the plaintiff broader and more efficient protection would be sufficient to satisfy the *McClung* test. See *Roberson v. Great American Ins. Cos. of N.Y.*, 48 F.R.D. 404, 424 (N.D. Ga. 1969). At least one court has authorized the use of the declaratory judgment procedure when habeas corpus was also available on the ground that it afforded a more effective remedy. *Berman v. Resor*, 302 F. Supp. 1200 (N.D. Cal. 1969). See also *Hurley v. Reed*, 288 F.2d 840, 848-49 (D.C. Cir. 1961). In *Berman*, an Army reservist who had been ordered to report to active duty sought a declaratory judgment that the Army was unlawfully refusing to discharge him as a conscientious objector. The court, while noting the cases holding that the Declaratory Judgment Act cannot be used as a substitute for habeas corpus, held that it could properly entertain the declaratory action on the ground that the action "offer[ed] benefits not otherwise available." 302 F. Supp. at 1202. The plaintiff had filed the action in the Northern District of California, where he resided but where none of his "custodians" resided. (Cf. *Schlanger v. Seamans*, 401 U.S. 487 (1971).) The court noted that the declaratory judgment action

enable[d] petitioner to file action [sic] in the district in which suit arose and in which the witnesses reside. If petitioner were forced to maintain the action in habeas corpus it could not be maintained in this district. 28 U.S.C. § 2241.

302 F. Supp. at 1202. In the instant case, of course, not only would the Kentucky District Court be in a position to grant Braden more effective and immediate relief, in light of its jurisdiction over the Kentucky state authorities, but there is also a serious question whether he has any federal district court available to him in which to file his habeas petition. In these circumstances, he may be entitled to have the Kentucky District Court entertain a complaint for a declaratory judgment, even before he files a habeas petition in the Alabama District Court, since the Kentucky Court is in a position to provide relief more speedily and less circuitously. See *Word v. North Carolina*, 406 F.2d 352, 357 (4th Cir. 1969); cf. *Hurley v. Reed*, *supra*, 288 F.2d at 849.

remedy (see *Nelson v. George*, *supra*, 399 U.S. at 228 n.5), *White* requires us to reverse the judgment of the court below and remand with instructions to dismiss the petition for lack of jurisdiction.

Our resolution of the jurisdictional issue makes it unnecessary to reach the question whether petitioner waived his 6th Amendment right to a speedy trial by his escape from Kentucky.

The court expresses its appreciation to David R. Hood, Esq., of Detroit, Michigan, who, without compensation, at the appointment of this court, represented the indigent petitioner-appellee with dedication and skill.

Reversed.

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 71-1801

[Filed Jan. 18, 1972, James A. Higgins, Clerk]

CHARLES D. BRADEN, PETITIONER-APPELLEE,

vs.

**30th JUDICIAL CIRCUIT COURT, COMMONWEALTH
OF KENTUCKY, RESPONDENT-APPELLANT**

**BEFORE: EDWARDS and MCCREE, Circuit Judges and MC-
ALLISTER, Senior Circuit Judge.**

JUDGMENT

APPEAL from the United States District Court for the Western District of Kentucky.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Kentucky and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the case remanded for further proceedings consistent with the opinion.

It is further ordered that Respondent-Appellant recover from Petitioner-Appellee the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.

**/s/ James A. Higgins
Clerk**

SUPREME COURT OF THE UNITED STATES

No. 71-6516

CHARLES D. BRADEN, PETITIONER

v.

30th JUDICIAL CIRCUIT COURT OF KENTUCKY

On petition for writ of Ceriorari to the United States Circuit Court of Appeals for the Sixth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

June 12, 1972

IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

No. 73-4376

CHARLES O. BRADEN

WILLIAM J. BRADEN, JR., OF BRADEN & SONS, INC.

OFFICE OF THE CLERK OF THE SUPREME COURT
WASHINGTON, D.C. 20540

ORDER FOR PUBLICATION

DAVID S. BRADEN
WILLIAM J. BRADEN, JR.
BRADEN & SONS, INC.
ATTORNEYS AT LAW

RECEIVED FOR THE
CLERK OF THE COURT